

DIVORCE

FREQUENTLY ASKED QUESTIONS

How long do I need to wait to get a divorce?

In Australia you can make an Application for Divorce once you have been separated for 12 months. If you have been separated under the same roof for some or all of the one year period, you will need to file an affidavit along with an affidavit of a friend or family member to provide evidence to the Court that you were separated during that time.

Do I have to explain why I want a divorce?

No - there is no fault divorce in Australia. You do not need to provide any information about your reason for wanting a divorce.

What if we got married overseas?

You need to file a copy of your Marriage Certificate with the Court. If your Marriage Certificate is not in English you will need to file a translation of your Marriage Certificate by a qualified translator.

Can my spouse refuse a divorce?

Your spouse does not need to consent to a divorce. Either party can file an Application for Divorce provided they have been separated for 12 months. The Application will need to be served on your spouse. Evidence will need to be provided to the Court that you have served a copy of the Application for Divorce on your spouse.

Who can file an application for divorce?

You can file an Application for Divorce in Australia if;

1. You have been separated from your spouse for 12 months
2. Either you or your spouse:
 - a. Regard Australia as your home and intend to live in Australia indefinitely; or
 - b. Are an Australian citizen by birth, descent or by grant of Australian Citizenship; or
 - c. Ordinarily live in Australia and have done so for the 12 months immediately before filing your application.

What if we have been married for less than two years?

If you have been married for less than 2 years you must first attend counselling with a family counsellor to discuss the possibility of reconciliation with your spouse or seek the court's permission to apply for divorce. If you would still like a divorce after you have attended counselling, a certificate from the family counsellor confirming that he/she has discussed the possibility of reconciliation with you and your spouse must be attached to your application.

Does it matter if we have not worked out a property settlement or the parenting arrangements for the children?

No - you can make an Application for Divorce even if you have not worked out a property settlement or the parenting arrangements for your children. Obtaining a divorce order starts the time limitation to secure a property settlement. It is therefore essential that you carefully consider the steps you need to take to secure your property settlement entitlement.

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